IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-330

RAY ELBERT PARKER, *Petitioner,*

v.

DANIEL J. BOORSTIN, LIBRARIAN OF CONGRESS, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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MEMORANDUM FOR RESPONDENT JERRY WURF IN OPPOSITION

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Petitioner is an employee of the Copyright Office of the Library of Congress. On April 24, 1975, the Librarian of Congress issued a regulation, LCR 2026, establishing a comprehensive labor-management relations program for the Library patterned after Executive Order 11491, which established a similar program for the Executive Branch of the Federal Government.

E.O. 11491, is patterned after the National Labor Relations Act, 29 U.S.C. § 151, et seq. LCR 2026 provides for exclusive recognition of an otherwise qualified employee organization selected by a majority of the employees voting by secret ballot in an appropriate unit (§ 6A(1), Appendix C to petitioner's Brief in the court of appeals). The regulation also provides that no agreement between the Library and any exclusive representative "shall require an employee to become or remain a member of a labor organization, or to pay any money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions." (LCR 2026, § 7B(3), Appendix C to petitioner's Brief in the court of appeals). Petitioner filed this suit[1] in May, 1975 challenging LCR 2026 on essentially two grounds: first, that the regulation's scheme of exclusive representation somehow violates petitioner's constitutional rights, and, second, that the regulation created a purportedly unconstitutional system of "compulsory unionism". The complaint was dismissed by the district court (Pet. App. 3b) and the court of appeals granted summary affirmance (Pet. App. 2a-3a).

The decision of the court of appeals is clearly correct and there is no conflict of decisions. Review by this Court is thus not warranted.

[1] This respondent was a party only in Civil Action No. 75-0798 in the District Court, which was consolidated with Civil Action No. 75-0284. The latter case is another suit by petitioner against the Librarian of Congress, in addition to which, petitioner has, in the last few years, filed at least 19 suits against the Library, among others. Of these cases, 14 have been dismissed and 5 are still pending. This Memorandum is filed only in connection with that case in which this respondent was a party (No. 76-1135 in the Court of Appeals).

1. The decision of the court of appeals granting summary affirmance of the district court's dismissal of petitioner's complaint is clearly correct. The questions presented by the petition, and argued by petitioner in the court of appeals, were simply not ripe for decision.[2] The complaint did not allege that an employee organization had been selected as the exclusive bargaining representative of employees in the unit in which petitioner is employed. Therefore, petitioner's claim that he was being harmed by the "imposition" upon him of an exclusive bargaining representative was plainly premature and the courts below properly declined to consider it. Petitioner's contention that LCR 2026 permits agreements between recognized employee organizations and the Library to establish "compulsory unionism", is answered by the Regulation itself, which, in Section 7B(3) (quoted supra at p. 2), plainly bars any agreement from containing such a requirement. Thus, the Courts below correctly declined to consider petitioner's contention.

2. Even if the questions Petitioner attempts to raise were properly before this Court, there is not, contrary to petitioner's assertion (Pet. at 2) any conflict of opinion which would justify granting the Writ herein. This Court has consistently upheld the principle of exclusive representation in the private sector under the National Labor Relations Act. *NLRB* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937); *J. I. Case Co.* v. *Labor Board*, 321 U.S. 332 (1944); *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967);

[2] Petitioner's contention that the Librarian of Congress lacked authority to issue the regulation in question (Petition, pp. 6-8) is raised for the first time in the Petition, and is therefore, not properly before this Court.

Emporium Capwell Co v. *Western Addition Community Organization,* 420 U.S. 50 (1975). The lower court decisions are similarly lacking in conflict with regard to challenges to exclusive representation in the public sector. *Connecticut State Federation of Teachers* v. *Board of Education Members,* F.2d (CA2), Docket No. 75-7436, decided May 21, 1976; *Local 3158, Edgewood Fed. of Teachers* v. *Edgewood Independent School District,* F. Supp. (W.D. Tex.) Civ. No. SA-74-CA-39, decided May 7, 1975; *Fed. of Delaware Teachers* v. *De La Warr Board of Education,* 335 F. Supp. 385 (D. Del. 1971); *Local 858, AFT* v. *School District No. 1,* 314 F. Supp. 1069 (D. Colo. 1970); *Bauch* v. *City of New York,* 21 N.Y. 2d 599, 237 N.E. 3d 211, (N.Y. Ct. App. 1968), cert. denied 393 U.S. 834 (1968); but see *Knight* v. *District Judge,* F.2d (CA8), Docket No. 75-7436, decided May 21, 1976.

3. Since the proper resolution of many of the issues petitioner attempts to present may well depend on factors unique to the peculiar status of the Library of Congress, a decision by the Court on these issues would have no substantial impact.

It is therefore respectfully submitted that the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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